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August 12, 2015

Tim Farber
Senior Counsel
Locke Lord LLP
111 South Wacker Drive
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By Email to Tfarber@lockelord.com

Re: Proposed Acquisition of Control of Humana Employers Health Plan of Georgia, Inc. ("Humana") by Aetna Inc. ("Aetna") – Questions Regarding Impact Upon Competition O.C.G.A. § 33-13-3(d)(1)(B).

Dear Mr. Farber:

We received the statement of Aetna regarding the captioned transaction on July 24, 2015 ("Form A"). As you know the Form A is a required filing, the form and substance of which is prescribed in O.C.G.A. § 33-13-3 and Georgia Regulation 120-2-23 (collectively "Review Standards"). As of the date of this letter the Form A is not complete because all of the information necessary to demonstrate compliance with the Review Standards has not been received. Consequently, the 30-day period set forth in O.C.G.A. § 33-13-3(d)(2) will not begin until all such information is submitted to the Georgia Department of Insurance ("Department").

I. STANDARDS FOR COMPETITION

Among the Review Standards applicable to the Form A process is the competitive standard set forth in O.C.G.A. § 33-13-3(d)(1)(B), *to wit*:

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of paragraph (1) of subsection (c) of Code Section 33-13-3.1 and the standards of paragraph (2) of subsection (d) of Code Section 33-13-3.1 shall apply;

(ii) The merger or other acquisition shall not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by paragraph (3) of subsection (d) of Code Section 33-13-3.1 exist; and

(iii) The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(emphasis added). Additionally, the competitive standards set forth in O.C.G.A. § 33-13-3.1¹ (“Competitive Standard”) are incorporated into the Review Standards. Pursuant to the Competitive Standard a market is highly concentrated if 75% or more of the market is held by four or fewer insurance groups.² By default, “market” means the relevant product market is assumed to be the direct written insurance premium (“DWP”) for a line of business (“LOB”), such line being that used in the annual statement and the geographic market is the entire state of Georgia.³ The following table includes the specific market concentration standard (*i.e.*, share of the market) for review of highly concentrated markets:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more; or

O.C.G.A. § 33-13-3.1(d)(2)(A)(i). The insurance group with the larger market share is “Insurer A” when applying the Competitive Standard.⁴ A violation of the standards set forth in this table constitutes “prima-facie evidence of a violation of the” Competitive Standard.⁵ Based upon the Department’s initial review it appears that the Form A contemplates an acquisition of control that violates the Competitive Standard.

¹ O.C.G.A. § 33-13-3.1 requires the filing of a statement (Form E) and governs the competitive review of acquisitions or merger of licensed insurers that are not domiciled in Georgia and are therefore not required to file a Form A.

² See, O.C.G.A. § 33-13-3.1(d)(2)(A); see also, O.C.G.A. § 33-13-3.1(d)(2)(C)(i) which defines insurer as including any company or group under common management, ownership, or control.

³ See, O.C.G.A. § 33-13-3.1(d)(2)(C)(ii).

⁴ See, O.C.G.A. § 33-13-3.1(d)(2)(A).

⁵ Id.

II. VIOLATION OF THE COMPETITIVE STANDARD

The Department reviewed the 2014 annual data submitted by all licensed insurers. Based upon our review of the data it appears that the Form A results in the violation of Competitive Standards in the following markets:

A. Individual Comprehensive Market⁶

Name	Individual Comprehensive DWP	Individual Comprehensive Market Share
HUMANA GRP	\$ 847,744,270.00	49.20%
Anthem Inc Grp	\$ 473,440,097.00	27.48%
AETNA GRP	\$ 151,487,928.00	8.79%
KAISER FOUNDATION GRP	\$ 81,203,127.00	4.71%
Assurant Inc Grp	\$ 46,841,132.00	2.72%
CIGNA HLTH GRP	\$ 36,822,726.00	2.14%
UNITEDHEALTH GRP	\$ 33,975,874.00	1.97%
Alliant Hlth Plans Inc	\$ 29,758,360.00	1.73%
CENTENE CORP GRP	\$ 11,735,074.00	0.68%
HealthMarkets Grp	\$ 5,720,106.00	0.33%
BCBS of SC Grp	\$ 811,901.00	0.05%
AMERICAN NATL FIN GRP	\$ 786,941.00	0.05%
GENEVE HOLDINGS INC GRP	\$ 611,730.00	0.04%
WESTBRIDGE CAPITAL GRP	\$ 596,579.00	0.03%
STATE FARM GRP	\$ 559,708.00	0.03%
NEW ERA LIFE GRP	\$ 544,504.00	0.03%
Piedmont WellStar Hlth Plans Inc	\$ 187,718.00	0.01%
AMERICAN INTL GRP	\$ 183,317.00	0.01%

The individual market is highly concentrated with the top 4 insurance groups controlling 90.18% of the market pre-acquisition and 92.89% post-acquisition. The Humana group of insurers control 49.20% of the individual market and the Aetna group of insurers control 8.79% of the individual market pre-acquisition and the Aetna group will control 57.99% post-acquisition. For purposes of applying the Competitive Standard the Humana group is Insurer A and the Aetna Group is Insurer B. The Humana Group controls greater than 15% of the individual market and

⁶ The market data for Individual Comprehensive is taken from the supplemental health care exhibit and includes life blank and health blank filers. NOTE: There were 12 groups with less than \$100,000 DWP that were not included in this table, but were included in the calculation of market share. These groups wrote a total of \$150,333 in DWP.

the Aetna Group controls greater than 1% of the individual market. Consequently, the transaction proposed in the Form A constitutes a prima-facie violation of the Review Standards.

B. Small Group Comprehensive Market⁷

Name	Small Group Employer Comprehensive DWP	Small Group Employer Comprehensive Market Share
Anthem Inc Grp	\$ 619,399,317.00	32.12%
AETNA GRP	\$ 496,146,997.00	25.73%
HUMANA GRP	\$ 450,093,731.00	23.34%
UNITEDHEALTH GRP	\$ 146,928,562.00	7.62%
KAISER FOUNDATION GRP	\$ 95,315,485.00	4.94%
Alliant Hlth Plans Inc	\$ 41,732,998.00	2.16%
Athens Area Hlth Plan Select Inc	\$ 21,330,729.00	1.11%
CIGNA HLTH GRP	\$ 17,451,994.00	0.90%
Assurant Inc Grp	\$ 15,367,399.00	0.80%
FEDERATED MUT GRP	\$ 14,364,363.00	0.74%
Nippon Life Ins Co Of Amer	\$ 6,560,212.00	0.34%
Trustmark Mut Holding Co GRP	\$ 1,455,269.00	0.08%
GENEVE HOLDINGS INC GRP	\$ 1,181,327.00	0.06%
Munich Re Grp	\$ 818,689.00	0.04%
BCBS of SC Grp	\$ 233,150.00	0.01%
PROTECTIVE LIFE INS GRP	\$ 22,963.00	0.00%
NEW ERA LIFE GRP	\$ 17,757.00	0.00%
Best Life & Hlth Ins Co	\$ 5,329.00	0.00%
GUARANTEE TRUST GRP	\$ 3,553.00	0.00%

The small group market is highly concentrated with the top 4 insurance groups controlling 88.81% of the market pre-acquisition and 93.75% post-acquisition. The Humana group of insurers control 23.34% of the small group market and the Aetna group of insurers control 25.73% of the small group market pre-acquisition and the Aetna group will control 49.07% post-acquisition. For purposes of applying the Competitive Standard the Aetna group is Insurer A and the Humana Group is Insurer B. The Aetna Group controls greater than 15% of the small group market and the Humana Group controls greater than 1% of the small group market. Consequently, the transaction proposed in the Form A constitutes a prima-facie violation of the Review Standards.

⁷ The market data for Individual Comprehensive is taken from the supplemental health care exhibit and includes life blank and health blank filers.

C. Medicare Title XVIII⁸

Name	Medicare Title XVIII DPW	Medicare Title XVIII
Anthem Inc Grp	\$ 1,236,527,427.00	33.73%
HUMANA GRP	\$ 895,514,324.00	24.43%
UNITEDHEALTH GRP	\$ 473,242,363.00	12.91%
AETNA GRP	\$ 381,403,896.00	10.40%
WELLCARE GRP	\$ 310,806,008.00	8.48%
KAISER FOUNDATION GRP	\$ 219,418,343.00	5.99%
CIGNA HLTH GRP	\$ 71,757,906.00	1.96%
Piedmont WellStar Hlth Plans Inc	\$ 53,935,615.00	1.47%
Torchmark Corp Grp	\$ 11,494,769.00	0.31%
UNIVERSAL AMER FIN CORP GRP	\$ 8,401,399.00	0.23%
HealthMarkets Grp	\$ 2,033,214.00	0.06%
Aegon US Holding Grp	\$ 729,900.00	0.02%
Symphonix Hlth Ins Inc	\$ 485,584.00	0.01%
CENTENE CORP GRP	\$ 296,375.00	0.01%

The Medicare Title XVIII market is highly concentrated with the top 4 insurance groups controlling 81.47% of the market pre-acquisition and 89.95% post-acquisition. The Humana group of insurers control 24.43% of the Medicare Title XVIII market and the Aetna group of insurers control 10.40% of the Medicare Title XVIII market pre-acquisition and the Aetna group will control 34.83% post-acquisition. For purposes of applying the Competitive Standard the Humana group is Insurer A and the Aetna Group is Insurer B. The Humana Group controls greater than 15% of the Medicare Title XVIII market and the Humana Group controls greater than 1% of the Medicare Title XVIII market. Consequently, the transaction proposed in the Form A constitutes a prima-facie violation of the Review Standards.

III. CONCENTRATED MARKETS SIGNIFICANTLY IMPACTED BY FORM A

The Department reviewed the 2014 annual data submitted by all licensed insurers. Based upon our review of the data, it appears that the following market is highly concentrated and is significantly impacted by the acquisition of control proposed in the Form A. The following markets are so impacted:

⁸ The market data for Title XVIII Medicare is taken from the state page of the Annual Statement and includes life blank and health blank filers.

A. Large Group Comprehensive Market⁹

Name	Large Group Employer Comprehensive DWP	Large Group Employer Comprehensive Market Share
Anthem Inc Grp	\$ 2,005,507,823.00	49.42%
KAISER FOUNDATION GRP	\$ 789,888,497.00	19.46%
UNITEDHEALTH GRP	\$ 445,815,993.00	10.99%
AETNA GRP	\$ 382,249,485.00	9.42%
CIGNA HLTH GRP	\$ 224,006,203.00	5.52%
HUMANA GRP	\$ 127,619,980.00	3.14%
Alliant Hlth Plans Inc	\$ 48,880,912.00	1.20%
Athens Area Hlth Plan Select Inc	\$ 19,419,738.00	0.48%
Piedmont WellStar Hlth Plans Inc	\$ 5,770,348.00	0.14%
Nippon Life Ins Co Of Amer	\$ 4,310,695.00	0.11%
GENEVE HOLDINGS INC GRP	\$ 1,612,228.00	0.04%
FEDERATED MUT GRP	\$ 1,301,714.00	0.03%
BCBS of SC Grp	\$ 1,203,266.00	0.03%
AMERICAN INTL GRP	\$ 565,280.00	0.01%
Assurant Inc Grp	\$ 94,335.00	0.00%
Trustmark Mut Holding Co GRP	\$ 6,057.00	0.00%

The large group market is highly concentrated with the top 4 insurance groups controlling 89.29% of the market pre-acquisition and 92.43% post-acquisition. The Humana group of insurers control 3.14% of the large group market and the Aetna group of insurers control 9.42% of the large group market pre-acquisition and the Aetna group will control 12.56% post-acquisition. For purposes of applying the Competitive Standard the Aetna group is Insurer A and the Humana Group is Insurer B. The Aetna Group controls greater than 4% of the large group market and the Humana Group controls less than 4% of the large group market. While the transaction proposed in the Form A does not quite constitute a prima-facie violation of the Review Standards, it does raise concerns of substantially lessened competition, particularly in light of the fact that the Anthem Group (49.42% of the LG market) proposes to purchase the Cigna Group (5.52% of the LG market).

⁹ The market data for Individual Comprehensive is taken from the supplemental health care exhibit and includes life blank and health blank filers.

IV. INQUIRIES

Please respond to the follow inquiries in writing no later than August 28, 2015.

When you are called on to provide an “explanation” you should provide a thorough response that addresses the inquiry along with relevant current events that will directly impact the market such as the acquisition by the Anthem group of the Cigna group, pending regulatory approval, and the market withdrawal of the Assurant group from the health market. Additionally, you should include copies of any relevant studies, expert opinions or analyses, or any other documents that you reference or rely upon in your explanation. Finally, you should avoid interposing statements in your explanation that are not supported by the facts and documents you are submitting in support of your explanation to the following inquiries:

1. The Form A contemplates a transaction that will result in the prima-facie violation of the Competitive Standard in the Individual Comprehensive market. This presumption is rebuttable. To rebut the presumption please provide a detailed explanation of why allowing Aetna to acquire Humana would not substantially lessen competition in Georgia. Otherwise please indicate your agreement with the violation.
2. The Form A contemplates a transaction that will result in the prima-facie violation of the Competitive Standard in the Small Group market. This presumption is rebuttable. To rebut the presumption please provide a detailed explanation of why allowing Aetna to acquire Humana would not substantially lessen competition in Georgia. Otherwise please indicate your agreement with the violation.
3. The Form A contemplates a transaction that will result in the prima-facie violation of the Competitive Standard in the Medicare Title XVIII market. This presumption is rebuttable. To rebut the presumption please provide a detailed explanation of why allowing Aetna to acquire Humana would not substantially lessen competition in Georgia. Otherwise please indicate your agreement with the violation.
4. The Large Group market is highly concentrated and the Form A contemplates a transaction that which is less than 1% from establishing a prima-facie violation of the Competitive Standard in the Large Group market. Provide a detailed explanation of why allowing Aetna to acquire Humana would not substantially lessen competition in Georgia. Otherwise please indicate your agreement with the violation.

Please feel free to contact me with any questions.

Regards,

/s/ Trey Sivley

Trey Sivley, Esq.
Director of the Division of Insurance and
Financial Oversight

Cc: Scott Sanders (via email)
Courtney Faust (via email)
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